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NHTSA-2002-11398-6

EXECUTIVE SECRETARIAT
2002 AUG 20 P 4: 09
NATIONAL HIGHWAY
TRAFFIC SAFETY ADM.

VIA FEDERAL EXPRESS

August 8, 2002

Administrator
National Highway Traffic Safety Administration
400 7th St. SW
Washington DC 20590

Re: Petition for Rulemaking to Modify 49 CFR Part 595

Dear Sir or Madam:

The Adaptive Driving Alliance ("ADA") is an organization serving dealers and manufacturers in the industry modifying and selling vehicles for the handicapped and disabled, often called the "Adaptive Driving" or "Mobility" Industry.

This letter is a petition for rulemaking and supports the pending petition to include advanced air bags within the exemption set forth at 49 CFR Part 595.7(c). It also requests that FMVSS 225 be included in the Part 595 exemptions to the render inoperative prohibition.

1. Advanced Air Bags

After reading the interpretation letter to Mr. Dick Keller dated May 2, 2002, ADA understands that a petition for rulemaking has been filed requesting that NHTSA expand the Part 595 exemption to include advanced air bags.

It is ADA's position that for the same reasons already recognized by NHTSA in promulgating existing 595.7(c)(14), the provisions requiring advanced air bags similarly need to be included within the Part 595(c)(14) exemption. Otherwise, required compliance with the advanced air bag provisions would be impractical, if not impossible, would likely serve as a prohibition against the use of motor vehicles for people with disabilities, would frustrate NHTSA's responsibilities under the Rehabilitation Act, would significantly impact small businesses, and would unreasonably decrease consumer choice.

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Moreover, an exemption under Part 595 is also appropriate under the rationale of National Truck Equipment Ass'n. v. NHTSA, 919 F.2d 1148 (DC Cir. 1990). In that case, the court required sufficient "leeway for small-scale customers without large engineering and testing departments to bring their individually-made [vehicles] into compliance." Under NTEA, there must an option open to individual customizers – such as modifiers in the Mobility Industry – to comply with standards, and if full crash tests or elaborate engineering studies are the only options, there is a violation of the statutory requirement that standards be "practicable". Such a failure to provide viable options also amounts to an impermissible elimination of consumer choice (*id.*), a particularly important factor in this situation involving the disabled.

There is no question that the Mobility Industry involves primarily small businesses. In NTEA, the court noted that the Regulatory Flexibility Act (RFA) reinforces the conclusion that an agency action is impractical and thus unreasonable if its failure to provide viable options to customizers has a great impact on small business. The NTEA court observed that, at the very least, such an impact might weigh in the court's determination that an agency action is arbitrary, capricious or contrary to law. After the NTEA case was decided, the Congress amended the RFA to give the courts even more power to overturn agency action that adversely affects small business. For this reason, Part 595 must be amended as requested to give the Mobility Industry the flexibility modifiers and their customers need.

Finally, NTEA expressly states that NHTSA can meet the needs of individual customizers "in many ways", including exemptions. There is thus a clear basis for NHTSA to permit the Mobility Industry to use Part 595 as a means of dealing with the advanced air bag requirements.

In the absence of Part 595 relief, there is no way for modifiers to comply with the advanced air bag requirements. It is certainly no more feasible than compliance with existing air bag requirements, and the agency has already included standard air bags within the Part 595 exemptions. Moreover, during the advanced air bag phase-in (Sept. 2003-Aug. 2006), modifiers cannot control which OEM vehicles have the advanced air systems and which do not, creating the potential for many different configurations, and the resultant inability to work on certain vehicles. (Note that it is not uncommon for people with disabilities to come to a modifier with an already-purchased vehicle on which the modifier is requested to do work).

By failing provide Part 595 relief, NHTSA would virtually destroy the well-established and vital industry of handicapped conversions. This result is not permitted under NTEA.

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ADA thus believes that the pending request to include advanced air bags in the Part 595 exemption to the “render inoperative” prohibition is entirely appropriate. ADA requests that NHTSA, at a minimum, amend 49 CFR Part 595(c)(14) to include S.14 of FMVSS 208.

2. Child Restraint Anchorages

FMVSS 225 also needs to be included within the Part 595 exemption to the render inoperative prohibition. Compliance with FMVSS 225 by the Mobility Industry would run counter to the same public policies stated above as regards advanced air bags. The rationale of National Truck Equipment Ass’n. v. NHTSA, supra, is equally applicable as regards FMVSS 225.

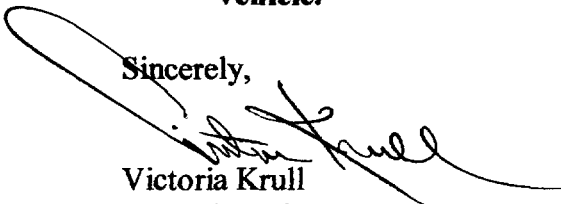
FMVSS 225 requires a certain number of child restraint anchorages and tethers at given locations. When, as part of modifying a vehicle for a disabled individual, an entire row of seats needs to be modified or removed (e.g. to allow wheelchair egress and ingress), then Part 595 must permit removal of the tethers and child restraint anchorages at those modified or removed locations. Otherwise, vehicle modifiers will be required to reengineer child restraint anchorages for installation at locations not contemplated by OEMs.

For the same reasons already recognized by NHTSA in promulgating the existing provisions of 595.7(c) covering air bags and other occupant protection requirements, the provisions requiring child restraint anchorages similarly need to be included within the Part 595 exemption.

Based on the foregoing, ADA respectfully requests that 49 CFR Part 595 be amended to include a new paragraph as follows:

“(c)(16) 49 CFR 571.225 for the designated seating position modified or removed, in any cases in which the restraint system and/or seat at that position must be modified or removed to accommodate a person with a disability, provided that at least one child restraint anchorage system under 571.225 or built-in child restraint system under 571.213 is present in the vehicle.”

Sincerely,



Victoria Krull
Executive Director